

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:	Merrie MARTIN	Confirmation No.:	7200
Application No.:	10/695,835	Group Art Unit:	1761
Filing Date:	October 30, 2003	Examiner:	Lien Tran
For:	READY TO BAKE REFRIGERATED DOUGH	Attorney Docket No.:	88265-14036

**SECOND DECLARATION OF MERRIE MARTIN UNDER 37 C.F.R. § 1.132**

**Mail Stop Amendment**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Merrie Martin, do declare that:

1. I am a citizen of the United States and reside at 9097 Lake in the Woods Trail, Bainbridge twp 44023, OH. I am the inventor of the invention described in the above-noted pending patent application, entitled "Ready to Bake Refrigerated Dough."

2. I hold a Ph.D. Degree in Grain Science and Industry from Kansas State University.

3. I presently hold the position of Project Leader at Nestec S.A. where I am responsible for product development of chilled dough. I have held this position for approximately 15 years. In particular, I have been specifically involved in researching, developing, and marketing bakery dough products.

4. I have reviewed and understand the above-identified patent application, the pending claims thereof, the pending Office Action, and the references cited by the Examiner in the above-identified application. Specifically, these references include U.S. Patent No. 6,551,640 to Drantch et al. ("Drantch"), U.S. Patent No. 4,873,098 to Banks et al. ("Banks"), and International Publication No. WO 01/06858 to Blaschke et al. ("Blaschke"). I am making

the following statements as one of ordinary skill in the art in support of the patentability of the pending claims.

5. The above-identified application is directed to a place and bake packaged dough product in the form of a bar, as well as methods for preparing fresh baked products using the same. When the product is to be prepared, the bar is simply removed from its packaging, placed directly in a pan, and baked in an oven. The only manipulation needed by the consumer is the placement of the dough, *e.g.*, brownie dough, into the pan, prior to baking. This avoids the waste of time and waste of dough necessitated by the forming and shaping required when preparing conventional fresh baked dough products. Moreover, the final product is not collapsed in the center of the pan after baking. Also, the dough bar is preferably placed with a margin between it and one or more walls of the baking container, and the bar then expands during baking to cover the entire bottom of the container. This advantageously minimizes burning or scorching through long-term contact of the dough bar with the hot baking pan walls. The examples in the application were prepared by me or under my direction and control.

6. Drantch relates to a shelf-stable dough for baked goods wherein fat-bearing pieces, that are dispersible within the dough, resist softening by depression of melting point within the dough. Drantch specifically requires in one embodiment that the dough is preformed in a baking tray specific to the desired type of baked product. Thus, in the only teaching of Drantch to mention preformed dough (Col. 12, lines 6-8), Drantch fails to teach sizing its preformed dough so as to leave a margin between the dough bar and the baking pan. Drantch also fails to teach that the dough then flows during baking and expands to cover the bottom of the baking pan, as presently recited. While Drantch does state that its dough is prepared into finished baked goods by simple addition to a baking container and baking to form a finished baked good, Drantch either sizes its dough without teaching a margin (Col. 12, lines 6-8) that results in increased risk of burning or scorching on the sides, or requires significant manipulation by the consumer (Col. 6, lines 60-62) that results in wasted time and dough material. Drantch does not teach that it was possible to simply remove dough from its packaging and place it directly into a baking pan, with no additional manipulation, as presently recited. In fact, Drantch clearly teaches different edible doughs that are either held and shaped by hand, rather than requiring tools, and/or that its doughs must be preformed in a

baking tray specific to the desired type of final baked product, *i.e.*, without leaving a suitable margin.

7. As previously noted, Drantch fails to even suggest the claimed invention because it provided no motivation to prepare or provide dough in the form of a solid, monolithic bar for baking, much less providing a dough that does not collapse in the center of the pan even after baking, and Drantch also provided no motivation to size its dough smaller than a baking pan and preparing it to flow during baking. In fact, cookies are not generally baked in blocks because a large block of cookies will not have the desired dual texture of crispness on the outer edges and chewiness in the center. Moreover, Drantch in one embodiment specifically teaches that the dough is preformed to fit the baking container, which is significantly different from the preferred embodiment of the present invention, which is now recited. As such, Drantch fails to disclose or suggest the preparation of a bar, or a place and bake dough product, that is baked to produce a final product that is not collapsed in the center of the pan after baking and that expands during baking to cover or fill the bottom of the baking pan. While the Patent Office states that it may have been obvious to make any size or thickness dough, in fact the claimed invention includes dough bars that are sized to provide improved baking characteristics and to facilitate preparation by the ultimate consumer. Nothing in the cited art of record teaches or suggests the benefits of the presently recited dough bars and preparation methods.

8. Banks teaches controlling the spread of cookie doughs during cooking by using a cold water swelling granular starch material with a cold water solubility of at least 50%. Banks specifically teaches, for example, forming its cookies by cutting the dough into pieces using a wire cutting device and baked in an oven (Examples 2-4), which requires a great deal of manipulation that the present invention avoids. Banks also discloses forming dough pieces in a conventional manner, such as wire cutting devices, and also rotary cutters, rotary molders, reciprocating cutters, and the like (Col. 10, lines 17-20). Banks of course fails to teach virtually every claimed feature, including dough bar products, as well as the place and bake feature coupled with a dough product that flows to expand and fill the bottom of the baking pan. In fact, Banks is teaching to use doughs that control the spread and therefore do not flow to fill or cover the bottom of the baking pan.

9. As previously noted, Blaschke describes a ready-for-use bakery dough product, which is provided in a form having grooves or score lines that define the individual pieces of the final baked product. Blaschke does not teach or suggest baking the whole block of dough as a monolithic mass. Rather, Blaschke only teaches breaking the block into the pieces defined by the grooves or score lines. The grooves on the product of Blaschke direct the consumer to divide the block into separate pieces. The separation of the pieces of Blaschke facilitates heat flow around the pieces for more uniform baking and to provide a dual texture of a crispy outside and a chewy inside. The present invention, however, surprisingly and unexpectedly provides uniform baking of a single entire block of dough. The block of the claimed invention is advantageously retained as a bar rather than being separated into smaller pieces prior to baking, which results in a chewier center than expected of separately baked pieces even if they are eventually rejoined. Indeed, the present claims recite that the dough bar does not include a groove or score line, so Blaschke is suggesting to do exactly the opposite of the claimed invention and cannot therefore be relevant.

10. It is thus my professional opinion, as one of ordinary skill in the art, that it would not have been obvious to modify Drantch, Banks, or Blaschke, individually or together, to obtain the place and bake dough products, or methods of providing a fresh baked product using the place and bake doughs, claimed by the above-identified application. No motivation existed to modify Drantch, or Drantch and Banks, to achieve the dough bar of the present invention that has a margin relative to the baking pan in which it is placed. It simply would not have been reasonable to expect to successfully achieve the claimed invention combining Drantch, Banks, and Blaschke, because Blaschke teaches the opposite of the claimed invention by requiring the use of groove or score lines and teaching to separate portions of dough before baking. Moreover, the claimed invention provides a surprising and unexpected advance in the drastic reduction of mess, wasted time, and wasted dough materials by avoiding the need for the consumer to manipulate the dough before it is placed on a pan and baked.

11. I further declare that all statements made herein of my knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the

United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Dated: January 13, 2006

  
Merrie Martin